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7 DELPHIX CORP.,
8 Plaintiff,
9 v.
10 ACTIFIO, INC.,
11 Defendant.

Case No. [13-cv-04613-BLF](#)

**ORDER GRANTING IN PART,
DENYING IN PART
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL**

[Re: ECF 73]

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13 Before the Court is plaintiff Delphix Corp.’s administrative motion to file under seal
14 portions of its Motion for Leave to File Fourth Amended Complaint, portions of its proposed
15 Fourth Amended Complaint, and Exhibits F-I filed in support thereof.¹ (Admin. Mot., ECF 73)
16 Specifically, Exhibits F, H, and I contain Plaintiff’s confidential information, and Plaintiff has
17 supplied a declaration in support of sealing in accordance with Civil Local Rule 79-5(d).
18 (Kolibachuk Decl., ECF 73-1) Exhibit G contains defendant Actifio’s confidential information,
19 and Defendant has not supplied the supporting declaration required by Civil Local Rule 79-5(e).
20 For the reasons stated herein, Plaintiff’s request is GRANTED IN PART and DENIED IN PART.

21 **I. LEGAL STANDARD**

22 There is a “strong presumption in favor of access” to public records and documents,
23 including judicial ones. *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir.
24 2006). A party seeking to seal a judicial record relating to the merits of the case bears the burden
25 of overcoming this presumption by articulating “compelling reasons supported by specific factual

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27 ¹ The exhibits sought to be sealed are both referenced in Plaintiff’s motion for leave to amend and
28 intended to be attached to Plaintiff’s proposed Fourth Amended Complaint and incorporated by
reference therein.

1 findings that outweigh the general history of access and the public policies favoring disclosure.”²
2 *Id.* This standard is invoked “even if the dispositive motion, or its attachments, were previously
3 filed under seal or protective order.” *Id.* at 1179 (citing *Foltz v. State Farm Mut. Auto. Ins. Co.*,
4 331 F.3d 1122, 1136 (9th Cir. 2003)). Compelling reasons for sealing court files generally exist
5 when such “court files might have become a vehicle for improper purposes,’ such as the use of
6 records to gratify private spite, promote public scandal, circulate libelous statements, or release
7 trade secrets.” *Id.* (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)).

8 Furthermore, in this District, parties seeking to seal judicial records must also follow Civil
9 L.R. 79-5, which requires, *inter alia*, that a sealing request be “narrowly tailored to seek sealing
10 only of sealable material.” Civil L.R. 79-5(b). Where the submitting party seeks to file under seal
11 a document designated confidential by another party (the “designating party”), the burden of
12 articulating compelling reasons for sealing is placed on the designating party. *Id.* 79-5(e).

13 II. ANALYSIS

14 A. Exhibits F, H, and I

15 Plaintiff seeks to file under seal Exhibits F, H, and I to its Motion for Leave to File Fourth
16 Amended Complaint and proposed Fourth Amended Complaint. Exhibit F is an employment
17 agreement that “pertains to the terms of employment of employees at Delphix.” (Kolibachuk
18 Decl, ¶ 4) Exhibits H and I contain “highly sensitive information regarding Delphix’s product
19 architecture and development.” (*Id.*) Plaintiff contends that disclosing any of this information
20 publicly “could cause harm to Delphix if the information were to become known to a competitor.”
21 (Admin. Mot. 1) The Court finds that Plaintiff has articulated sufficiently compelling reasons for

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23 ² The Ninth Circuit has carved out an exception for materials attached to non-dispositive motions,
24 applying the lower “good cause” standard for sealing such documents. *Id.* 1179-80. As explained
25 in *Kamakana*, the public has less need to access materials attached to non-dispositive motions
26 because they are often “unrelated, or only tangentially related, to the underlying cause of action.”
27 *Id.* (quoting *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1213 (9th Cir. 2002)). The same
28 cannot be said for documents—such as pleadings—that are “at the heart of the interest in ensuring
the ‘public’s understanding of the judicial process and of significant public events.’” *Id.* at 1179
(quoting *Valley Broad. Co. v. U.S. Dist. Court for Dist. of Nevada*, 798 F.2d 1289, 1294 (9th Cir.
1986)); *see also In re NVIDIA Corp. Derivative Litig.*, No. C 06-06110 SBA, 2008 WL 1859067,
at *3 (N.D. Cal. Apr. 23, 2008) (applying “compelling reasons” standard in evaluating request to
seal complaint).

1 sealing, and Plaintiff's motion is GRANTED as to Exhibits F, H, and I.

2 **B. Exhibit G**

3 Plaintiff's administrative motion indicates that Exhibit G was designated confidential or
4 highly confidential by Defendant, and that Plaintiff served on Defendant a declaration identifying
5 the documents and portions of Plaintiff's motion that contain Defendant's confidential
6 information. Pursuant to Civil Local Rule 79-5(e), Defendant was required to file a declaration in
7 support of sealing within 4 days of the filing of the administrative motion to file under seal. Civ.
8 L.R. 79-5(e). As Defendant has not filed the required supporting declaration, Plaintiff's sealing
9 request is DENIED as to Exhibit G and the portions of Plaintiff's motion and proposed pleading
10 corresponding thereto.

11 **C. Proposed Redactions**

12 Plaintiff has proposed redactions to portions of its Motion for Leave to File Fourth
13 Amended Complaint and proposed Fourth Amended Complaint. It is not clear whether these
14 redactions correspond to the exhibits sought to be filed under seal and, if so, which redactions
15 correspond to which exhibits. Moreover, these redactions are not narrowly tailored, as required by
16 the local rules. For example, Plaintiff proposes to redact portions of its brief describing conduct
17 related to Defendant's alleged misappropriation of Plaintiff's trade secret. (*See* Pl.'s Mot. 2:26-
18 3:12) Although this section refers to Exhibits H and I, which this Court has determined to be
19 sealable, the description of Defendant's *conduct* does not appear to disclose any specific details
20 about Plaintiff's highly sensitive product and development information. Additionally, to the
21 extent certain portions were redacted because they contained information designated confidential
22 by Defendant, those portions should be unsealed because Defendant has not articulated compelling
23 reasons in support of sealing. As such, Plaintiff's request to seal portions of its motion and
24 proposed pleading is DENIED without prejudice.

25 **III. ORDER**

26 For the foregoing reasons, Plaintiff's Administrative Motion to File Under Seal is
27 GRANTED IN PART and DENIED IN PART.

- 28 1. Plaintiff's motion is GRANTED as to Exhibits F, H, and I. Those exhibits shall remain

1 under seal.

- 2 2. Plaintiff's motion is DENIED as to Exhibit G. Plaintiff shall file the exhibit into the
3 public record no earlier than 4 days, and no later than 10 days, after the date of this
4 order. Civ. L.R. 79-5(e)(2).
- 5 3. Within **ten (10) days** of the date of this order, Plaintiff shall propose narrowly tailored
6 redactions to portions of its Motion for Leave to File Fourth Amended Complaint and
7 proposed Fourth Amended Complaint. Plaintiff's filing shall include a proposed order
8 that lists in table format each document or portion thereof that is sought to be sealed.
9 Civ. L.R. 79-5(d)(1)(B).

10 **IT IS SO ORDERED.**

11 Dated: August 20, 2014


12 BETH LABSON FREEMAN
13 United States District Judge

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United States District Court
Northern District of California